



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0285; FRL- 9909-01-Region-4]

Approval and Promulgation of Implementation Plans;

Tennessee; Conflict of Interest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing two actions pertaining to the Clean Air Act (CAA or Act) State Implementation Plan (SIP) requirements for the State of Tennessee. First, EPA is approving the SIP revision submitted by Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) on October 9, 2013, as meeting the applicable requirements of the Act. This SIP revision addresses Tennessee's outstanding obligations related to the CAA State board and conflict of interest requirements. Second, EPA is fully approving the infrastructure SIP sub-element related to the State board and conflict of interest requirements for the 2008 Lead National Ambient Air Quality Standards (NAAQS), 1997 Annual Fine Particulate Matter (PM_{2.5}) NAAQS, 2006 24-hour PM_{2.5} NAAQS and 1997 8-hour ozone NAAQS. EPA notes that all other applicable Tennessee infrastructure SIP elements for the 2008 Lead, 1997 annual PM_{2.5}, 2006 24-hour PM_{2.5}, and 1997 8-hour ozone NAAQS have been addressed in separate rulemakings.

DATES: This rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0285. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS.

Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. On July 23, 2012 (77 FR 42997), August 2, 2012 (77 FR 45958), and June 18, 2013 (78 FR 36440), EPA approved in part, and conditionally approved in part, Tennessee’s infrastructure SIPs for the 1997 8-hour ozone NAAQS, 1997 annual PM_{2.5} NAAQS, 2006 24-hour PM_{2.5} NAAQS and 2008 Lead NAAQS, respectively.

Specifically, EPA conditionally approved the portion of section 110(a)(2)(E)(ii) (hereafter “sub-element 110(a)(2)(E)(ii)”) respecting the Act’s section 128(a)(1) requirements for each of the above NAAQS. Sub-element 110(a)(2)(E)(ii) provides that each infrastructure SIP shall provide requirements “that the State comply with the requirements respecting State boards under section [128 of the CAA]....” Section 128, in turn, provides that each SIP shall contain requirements that: 1) any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under the Act (hereafter “section 128(a)(1) requirements”); and, 2) any

potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed (hereafter “section 128(a)(2) requirements.”) EPA was unable to fully-approve Tennessee’s infrastructure submissions for the above NAAQS with respect to sub-element 110(a)(2)(E)(ii) because, at the time, the SIP did not include provisions to address the section 128(a)(1) requirements.¹

On March 28, 2012, TDEC transmitted a letter to EPA, committing to adopt specific enforceable measures into its SIP by July 23, 2013, to address section 128(a)(1). This commitment provided a basis for EPA to exercise the conditional approval authority provided at section 110(k)(4) of the CAA. Consistent with this authority, Tennessee was required to adopt the specified enforceable provisions and submit a revision to EPA for approval by July 23, 2013 (one year following the conditional approval action).² As described at section 110(k)(4), and as noted by EPA in its conditional approval actions, failure by the State to adopt the specified provisions and submit them to EPA for incorporation into the SIP by July 23, 2013, would result in the conditional approvals automatically converting to disapprovals. Tennessee failed to meet the July 23, 2013, commitment deadline, and instead, submitted the section 128(a)(1) revisions to EPA on October 9, 2013. As a result, the sub-element 110(a)(2)(E)(ii) conditional approvals automatically converted to disapprovals on July 23, 2013.

On January 9, 2014, EPA provided notice of the conversion of the section 110(a)(2)(E)(ii) conditional approvals to disapprovals. 79 FR 1608. In the same action, EPA also proposed to approve TDEC’s October 9, 2013 SIP revision as being sufficient to address

¹ The section 128(a)(2) conflict of interest disclosure requirements, however, were met by existing provisions in the Tennessee SIP. *See* 77 FR 42997, 42998; 77 FR 45958, 45960; and 78 FR 36440, 36442.

² EPA’s initial final action to conditionally approve sub-element 110(a)(2)(E)(ii) occurred on July 23, 2012. Therefore, Tennessee’s commitment to submit the specific enforceable measures necessary to comply with section 128(a)(1) requirements was due no later than July 23, 2013. *See* 77 FR 42997.

Tennessee's outstanding obligations related to the CAA section 128(a)(1) requirements. In addition, EPA also proposed through the January 9, 2014, action to approve infrastructure SIP sub-element 110(a)(2)(E)(ii) related to the State board and conflict of interest requirements for the 2008 Lead, 1997 annual PM_{2.5}, 2006 24-hour PM_{2.5}, and 1997 8-hour ozone NAAQS.³ EPA received no comments on these proposed actions.

II. Tennessee's State Board and Conflict of Interest Submission

TDEC's October 9, 2013, SIP revision revises the content Chapter 1200-3-17 and moves it to a new chapter: Chapter 0400-30-17 *Conflict of Interest*. Chapter 1200-3-17 is reserved for future use. The revision further adds new sections 0400-30-17-.02 *Protecting the Public Interests* and 0400-30-17-.05 *Policy of Ethics and the Avoidance of Conflicts of Interest*. EPA is approving this revision because the Agency has determined that, once approved into the Tennessee SIP, this change will address the section 128(a)(1) requirements that any board or body which approves permits or enforcement orders under the CAA have at least a majority of members who represent the public interest and not derive a significant portion of their income from persons subject to permits or enforcement orders under the Act.

Specifically, TDEC's revision incorporates a new rule into its SIP to address section 128(a)(1) requirements. Rule 0400-30-17-.02 *Protecting the Public Interests* contains definitions and requirements that will enable the Tennessee Air Pollution Control Board (hereafter the "Board") to clearly determine if it has a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under the Act. The intent of rule 0400-30-17-.02 is to ensure that at least half of the Board serves in the public interest and does not derive any significant income from

³ The proposed approval of the infrastructure SIP sub-element for these NAAQS was contingent upon EPA fully approving the TDEC October 9, 2013, revision to address the requirements of CAA section 128(a)(1).

persons subject to permits or enforcement orders under the Act. Pursuant to these provisions, in the event the Board is unable to determine that it is comprised consistent with the requirements of section 128(a)(1), the revisions prevent the Board from hearing contested cases until such time as it complies with the requirements of section 128.

TDEC is also revising sections 0400-30-17-.01 *Purpose and Intent* (formally 1200-3-17-.01), 0400-30-17-.03 *Conflict of Interest on the Part of the Board and Technical Secretary* (formally 1200-3-17-.02) and 0400-30-17-.04 *Conflict of Interest in the Permitting of Municipal Solid Waste Incineration Units* (formally 1200-3-17-.03) of the SIP. EPA has determined that these revisions, are sufficient to meet the State's obligations pursuant to the requirements of CAA section 128(a)(1).

III. Tennessee's Infrastructure SIP Submission

Sub-element 110(a)(2)(E)(ii) requires compliance with the requirements respecting State boards and conflicts of interest pursuant to section 128 of the Act. EPA reviews infrastructure SIP sub-element 110(a)(2)(E)(ii) submissions to ensure that the SIP includes provisions satisfying section 128 requirements. Today's final approval of the October 9, 2013, SIP revision to address section 128(a)(1) requirements results in the Tennessee SIP fully meeting the applicable section 128 requirements.⁴ Accordingly, EPA is also hereby finalizing approval of sub-element 110(a)(2)(E)(ii) with respect to the applicable section 128(a)(1) requirements for the 2008 Lead NAAQS, 1997 annual PM_{2.5} NAAQS, 2006 24-hour PM_{2.5} NAAQS and 1997 8-hour ozone NAAQS.

IV. Final Action

⁴ As previously noted, the section 128(a)(2) conflict of interest disclosure requirements, were met by existing provisions in the Tennessee SIP. See 77 FR 42997, 42998; 77 FR 45958, 45960; and 78 FR 36440, 36442.

EPA is approving the SIP revision submitted by TDEC on October 9, 2013, as meeting the applicable requirements of section 128(a)(1) the Act. Additionally, EPA is fully approving the infrastructure SIP sub-element 110(a)(2)(E)(ii) related to the State board and conflict of interest requirements for the 2008 Lead NAAQS, 1997 Annual PM_{2.5} NAAQS, 2006 24-hour PM_{2.5} NAAQS and 1997 8-hour ozone NAAQS. These actions are being taken pursuant to section 110 of the CAA.

EPA notes that the subject of this notice is limited to the section 128(a)(1) requirements and the associated infrastructure SIP sub-element 110(a)(2)(E)(ii). All other applicable Tennessee infrastructure SIP elements for the 2008 Lead NAAQS, 1997 annual PM_{2.5} NAAQS, 2006 24-hour PM_{2.5} NAAQS and 1997 8-hour ozone NAAQS have been addressed in separate rulemakings.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 21, 2014.

A. Stanley Meiburg,
Acting Regional Administrator,
Region 4.

For the reasons set out in the preamble, 40 CFR part 52, is to be amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

§ 52.2219 [Removed and Reserved]

2. Section 52.2219 is removed and reserved.

3. Section 52.2220(c) is amended by:

a. Removing the entry in Table 1 for “CHAPTER 1200-3-17 CONFLICT OF INTEREST” in its entirety; and

b. Adding in numerical order a new entry in Table 1 for “CHAPTER 0400-30-17 CONFLICT OF INTEREST”.

The addition reads as follows:

§ 52.2220 Identification of plan.

* * * *

(c) * * *

Table 1 – EPA Approved Tennessee Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
CHAPTER 0400-03-17 CONFLICT OF INTEREST				
Section 0400-30-17-.01	Purpose and Intent	9/23/2013	[Insert date of publication in <u>Federal Register</u> [Insert citation of publication]	

Section 0400-30-17-.02	Protecting the Public Interests	9/23/2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
Section 0400-30-17-.03	Conflict of Interest on the Part of the Board and Technical Secretary	9/23/2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
Section 0400-30-17-.04	Conflict of Interest in the Permitting of Municipal Solid Waste Incineration Units	9/23/2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
Section 0400-30-17-.05	Policy of Ethics and the Avoidance of Conflicts of Interest	9/23/2013	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
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[FR Doc. 2014-07240 Filed 04/01/2014 at 8:45 am; Publication Date: 04/02/2014]